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COMMISSION ON HUMAN RIGHTS
Fiftieth session
Item 12 of the Provisional Agenda

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Written statement submitted by Human Rights Advocates, a non-governmental organization in consultative status (Category II)

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[1 February 1994]

1. We are compelled to again raise the situation in Tibet. There is reliable evidence that the Tibetan people, who have borne alien domination for more than 43 years, continue to suffer a systematic pattern of gross human rights abuses. These reported abuses pertain to collective and individual rights, permeate virtually every aspect of daily life and touch Tibetan men, women and children alike.

2. We welcome the United Nations numerous discussions of and actions on the situation in Tibet, particularly General Assembly resolution 1723 (XVI) in which the Assembly solemnly renewed its call for the cessation of practices which deprive the Tibetan people of their fundamental human rights and freedoms, including their right to self-determination, as well as General Assembly resolutions 1353 (XIV) and 2079 (XX). We recall Sub-Commission resolution 1991/10 expressing concern over continuing reports of "violations of fundamental human rights and freedoms which threaten the distinct cultural, religious and national identity of the Tibetan people", and in which the Sub-Commission called upon the Government of the People's Republic of China "fully to respect the fundamental human rights and freedoms of the Tibetan people".

3. We deeply regret, however, that both the Commission and its Sub-Commission have been reluctant to take further measures to deter the abuses of human rights discussed in the Note by the Secretary-General on Tibet (E/CN.4/1992/37), which continue unabated.

4. Although we focus here upon political detention, torture and population transfer, we urge the Commission to recall the other human rights abuses widely reported as prevalent in Tibet and to recognize that all these violations effectuate the denial of the Tibetan people's right of self-determination.

5. We also urge the Commission to consider that the People's Republic of China controls access to Tibet, restricts contact between Tibetans and foreigners, inhibits the functioning of such outside delegations as it allows to visit Tibet, and deems furnishing information to outsiders a criminal act, thereby placing itself in exclusive control of the most reliable evidence concerning events in Tibet (International Committee of Lawyers for Tibet, Resolving Claims of Self-Determination: A Proposal for Integrating Principles of International Law with Specific Application to the Tibetan People, June 1993, pp. 43-45). Therefore, we respectfully request that the People's Republic of China be called upon to make all relevant information available to international observers.

Political detention and torture

6. We have received reliable evidence that arbitrary arrest and detention of Tibetans for political offences is on the increase. Owing to the concealment by the People's Republic of China of its prisons and detention centres, much of this evidence cannot be completely confirmed. None the less, the numerous eyewitness reports establish at least a prima facie showing that the People's Republic of China continues to arrest and detain Tibetans for such political offences as peaceful demonstrations, possession of the Tibetan flag, and monitoring human rights abuses.

7. According to the evidence available, at least 107 Tibetans were arrested for political offences in Tibet between April and July 1993. Whereas in February 1992, the number of known political prisoners held in the Tibet Autonomous Region was 240, it had increased to 335 by May 1993, despite the fact that numerous prisoners incarcerated in 1989 should have been released in 1992, upon completion of their three-year sentences (Tibet Information Network, 31 July 1993, 11 August 1993 and 13 May 1993).

8. Most of these arrests have been based upon Tibetans' participation in peaceful demonstrations, possession of the Tibetan flag, and monitoring of human rights abuses (see Tibet Information Network, 1993 Conference Updates). As repeatedly noted by this Commission, such arbitrary arrest and detention violate numerous norms of international law. They are expressly prohibited in article 9 of the Universal Declaration of Human Rights and article 9 (1) of the International Covenant on Civil and Political Rights (ICCPR). Because they are intended to deter the exercise of the rights of free expression and peaceful assembly recognized in articles 19 and 20 of the Universal Declaration, and articles 19 and 21 of ICCPR, they also violate those rights (ICLT, Resolving Claims of Self-Determination, June 1993, pp. 120-122).

9. We have received reliable evidence that persons arbitrarily arrested and detained are also tortured, which is consistent with a pattern widely reported in recent years (see Amnesty International, Repression in Tibet 1987-1992, May 1992; Asia Watch and Tibet Information Network, Political Prisoners in Tibet, February 1992). For instance, the teacher Deng Ge, a monk and two mid-level Tibetan officials were reportedly beaten with a spiked club for eight hours by local police in Markham in Eastern Tibet, and afterwards were refused treatment at the local hospital. Damchoe Pemo miscarried a 4-5 month foetus after being forced to stand for at least 12 hours and beaten with electric batons (Tibet Information Network, 19 October 1993 and 4 August 1993). Such practices violate article 5 of the Universal Declaration of Human Rights, article 7 of ICCPR, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. We call upon members of the Commission to ensure that the People's Republic of China expeditiously implement the suggestions and demands made by the Committee against Torture in April 1993.

10. In addition to torture, political prisoners are reportedly subjected to unhealthy and severe prison conditions, including forced labour and limited access to proper medical treatment. In May 1993, 11 political prisoners in Drapchi prison in Lhasa were reported to be in bad health, in part as a result of eight-hour work days in greenhouses that can reach temperatures of 55 degrees Celsius. The fact that prisoners must work in Tibet is specified in No. 8 of the "Ten Commands" of the Prison Rules, issued by the Tibetan Autonomous Republic Labour Reform Bureau in October 1988 (Tibet Information Network, 19 October 1993).

Population transfer

11. International observers uniformly report that the rate of influx of Chinese settlers into Tibet has increased significantly. The influx is considered to be a combination of the direct transfer of Chinese by the Government, government induced relocation, and spontaneous migration with indirect government support (International Campaign for Tibet, Population Transfer and the Future of Tibet, April 1993). The Permanent Tribunal of Peoples concluded, in their 20 November 1992 verdict on Tibet, that "the population transfer from the People's Republic of China into the territory of Tibet of non-Tibetan peoples is directed towards undermining the ethnic and cultural unity of Tibet".

12. Although precise population figures are unavailable, the available evidence indicates that Chinese now outnumber Tibetans in urban areas of the Tibet Autonomous Region and in most of the eastern and northern Tibetan Autonomous Prefectures in Sichuan and Qinhai provinces. The effects of this dramatic increase of Chinese settlers on the land and indigenous people of the Tibetan plateau are reported to be considerable. Population transfer is closely connected with genocide and is at least arguably a crime against mankind, inherently discriminatory and fundamentally destructive of cultures whose cohesiveness is integrally connected to particular land (Sub-Commission resolution 1992/28; International Law Commission, Draft Code of Crimes Against the Peace and Security of Mankind, A/46/10; "Question of human rights of peoples and nations subject to population transfer", UNPO document A/2/1991/2;

Falk, Revitalizing International Law, Ames 1989, p. 217; Hannum, Autonomy, Sovereignty and Self-Determination: The Accommodation of Conflicting Rights, Philadelphia, 1990, p. 91; Parker and Neylon, Jus Cogens: Compelling the Law of Human Rights, 12 Hast. Int'l Comp. L. Rev.411, 1989, p. 430).

13. These effects can be seen clearly in Tibet. Tibetans are subjected to discrimination in virtually every aspect of life, including education, employment, housing, and medical care. The People's Republic of China systematically exploits Tibet's natural resources for its own benefit, without popular participation in governmental decision-making, and the economic benefits of timber harvesting and mining do not accrue to Tibetans (Ermacora and Benedek, Austrian Delegation of Legal Experts to China/Tibet, July 1992: Conclusions and Recommendations, September 1992, para. 7; LAWASIA and TIN, Defying the Dragon: China and Human Rights in Tibet, March 1991, p. 89; Human Rights Advocates, The Situation in Tibet: A Survey of Current Human Rights Violations, including Denial of the Right to Self-Determination, 17 January 1992, p. 15; International Campaign for Tibet, The Long March: Results of a Fact Finding Mission in Tibet, September 1991, pp. 25-26). The People's Republic of China implements these policies with no concern for the wishes of Tibetans, who risk punishment and even disappearance for attempting to influence environmental decisions (ICLT, The Relationship Between Environmental Management and Human Rights in Tibet, July 1992, pp. 4-5).

Recommended action by the Commission

14. The question of Tibet has been brought before the Commission repeatedly. We are concerned by reports that indicate a growing frustration among Tibetans inside Tibet over the unwillingness of the international community to address their concerns (Tibet Information Network, May 1992). By failing to support the Tibetan people's non-violent campaign for fundamental rights and freedoms, the international community unwittingly strengthens those who would advocate violence. It is critical that the Commission act now.

15. We strongly urge the Commission to adopt a resolution that condemns individual and collective human rights violations in Tibet and calls for the cessation of policies that threaten the Tibetan people's distinct cultural, religious and national identity. We also respectfully call upon the Commission to appoint a special rapporteur to study and report accurately the situation in Tibet.

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COMMISSION ON HUMAN RIGHTS
Fiftieth session
Agenda item 12

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Written statement submitted by the International Federation of Human Rights a non-governmental organization in consultative status (category II)

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[4 February 1994]

Human rights violations in Tibet

1. The International Federation of Human Rights (IFHR) expresses its serious concerns over systematic and gross violation of human rights and fundamental freedoms in Tibet by the People's Republic of China and regrets that no concrete measures are being taken by the Chinese authorities to end its four decades of repression and occupation in Tibet.

2. Today, the people of Tibet suffer from serious, continuing human rights violations which affect their lives as individuals and threaten their distinct cultural, religious and national identity as a people. Under Chinese colonization, Tibet is slowly being transformed into a land of Chinese settlers wherein the Tibetans are becoming an insignificant minority in their own country. The last four decades of Chinese rule in Tibet has systematically denied the Tibetan people the rights enshrined in the international human rights instruments. Population transfer, coercive birth control policy, religious intolerance, arbitrary arrest and detention, lack of freedom of expression and assembly, racial discrimination are some of the major human rights problems in Tibet to which IFHR wishes to draw the attention of the Commission on Human Rights at its present session.

Population transfer

3. There is international concern over reports of massive movements of Chinese into Tibet during the last decade. The current population trends in Tibet show the Tibetans being pushed further and further away from the mainstream. Day by day their legitimate role in the political, social, economic and cultural aspects of life in Tibet is becoming irrelevant. Tensions have increased as the Tibetans find themselves losing most of the opportunities in employment, housing, education and health care to Chinese settlers. The authorities are normally seen as approving these Chinese settlements.

4. Various independent reports state that during the past few years the Chinese population has increased dramatically in Tibet, particularly central Tibet. The formation of separate and distinct Tibetan and Chinese communities in most Tibetan towns indicates how far the settlement of the Chinese population in Tibet has gone. The Chinese authorities, far from doing nothing to control the influx of Chinese settlers into Tibet, have instead created new situations which will bring more Chinese into Tibet. One such situation is the lifting of check-points on the eastern borders of Tibet and proclaiming the "economic opening-up" of Tibet. The other is the growing number of shops and apartment buildings in many towns in central Tibet. Travellers to Tibet described these new situations: "Once-impoverished peasants from China's nearby Sichuan Province profiteer by buying raw materials from Tibet at State prices or by selling 'imported' Chinese goods on the free market. They share their riches with Chinese Communist Party officials who issue business permits and fund new military projects outside the city". This shows that the Chinese

authorities actually encourage and support the settlement of the Chinese population in Tibet, despite officially denying it. Through population transfer the Chinese authorities are violating yet another fundamental human right of the Tibetan people.

Coercive birth control in Tibet

5. The rapid implementation of the Chinese birth control policy in Tibet is another major concern of the Tibetan people. Tibetans claim that Tibet is under-populated, needing more human resources, while the Chinese authorities regard birth control in Tibet as a way to achieve "population quality". The Chinese authorities normally reject Tibetan views on birth control as "stubborn adherence to old customs and tradition". The fundamental question of the people of Tibet is whether this Chinese policy is another attempt to eliminate their instinct identity.

6. There is now credible and documented information that Chinese birth control practices in Tibet are being carried by irrational policies. The insidious Chinese system of restrictions on who may give birth, at what age and where, and fines of up to 2,000 yuan (US$ 233) for "illegal" children, and incentives for one-child families, including payment of 50 yuan plus five yuan per month, job promotions, etc., have forced women to abort or succumb to sterilization.

7. The Chinese authorities patronize their "family planning" campaign as essential since the "excessive growth of population has relatively slowed down the growth of economic development in our region". The policy to forcefully implement their birth control campaign in Tibet, without considering the rationale in the region, suggests that Tibetans will continue to face increasing pressure to limit the size of their families. For example, a birth control policy implementation strategy formulated by the "family planning" Office of Chabcha (Gonghe) in north-eastern Tibet and presented to the "district people's government" on 25 January 1991, which was published as document No. 90 and brought into force by a notification dated 24 June 1992, reveals that a high degree of coercion is being used among the Tibetans in the area, including specifically, among the farmers and nomads.

Religious intolerance

8. Reports and other evidence in 1993 show that Chinese authorities continue to implement a policy of discrimination based on religion in Tibet, through administrative bodies like the "Democratic Management Committee" and "Work Teams", and there is, of course, no change in the official Chinese position that one must "love the Communist Party" in order to have the rights to religious belief. Important Tibetan religious festivals (like the Monlam or the Great Prayer Festival) and prayers like Gyalwae Shabten and Dentsig Monlam remained banned.

9. The Chinese authorities have launched further "political re-education campaigns" in five nunneries in and around Lhasa: Tsamkhung, Gari, Chupsang, Shungseb and Mijungri. These campaigns are conducted by "work teams", known

in Chinese as gonzuo dui, which last year spent up to three months in regular visits to each of the above nunneries. More than 400 monks and nuns were expelled from their institutions when similar "re-education" campaigns were launched in 1990.

10. In a new attempt to limit the number of monks and nuns in Tibet, official Chinese publications have announced in 1993 that they "have decided to limit the growth in the number of monks". However, this decision seems to have ignored repeated appeals from various Tibetan monasteries to increase the number of monks or nuns. For example, at a Chinese Conference in 1992 many delegates suggested that due to a "ceiling" on the number of monks, their institutions are unable to fulfil their religious responsibilities. One delegate from Ngari (Ali) told this meeting: "In most of the monasteries in the Ngari area there is not even a single monk or nun. Therefore, the villagers are trying to be the keepers of these monasteries. In a few monasteries there are one to two monks or nuns but all of them are very old. For instance, Thonding monastery, an historically important monastery with many precious religious artifacts, has not even a single novice .... With the present number of monks it is difficult to carry on our daily religious responsibilities and also to protect and preserve the religious articles in our monasteries". Therefore, external propaganda successes are basically what the Chinese authorities target to achieve by allowing the Tibetans a limited form of religious freedom in Tibet.

Intensified repression

11. Through their campaign against "counter-revolutionaries" and "splitists", the Chinese authority repeatedly calls for the total suppression of the freedom of expression and assembly in Tibet. For instance, Zhang Zhu, political commissar of the armed police force in the "Tibet Autonomous Region", was awarded the military title of major general by the Chinese authorities in Lhasa on 1 January 1994. Zhang Zhu was praised for "taking a clear-cut stand at the forefront of the anti-splittist struggle and resolutely battling against splitist forces ...". Zhang Zhu in his speech said that he was "determined to live up to the expectations of the party" and vowed that he and his troops will "serve as daggers" with which to cope with riots and contingencies and make new contributions to opposing splitism ...". This shows that in Tibet, the Chinese authorities will continue to resort to violent means in order to suppress the free expression of political beliefs.

12. During the past two years several hundred Tibetans have been arbitrarily detained in Tibet by the Chinese authorities, especially administrative detention for long periods. In 1993, for the first time in many years, a large number of Tibetans, including artists and intellectuals, have been arrested in north-eastern Tibet (now known as Qinghai province) for alleged political activities. Under these conditions, Tibetan political prisoners remain under continued threats of torture, the practice of which is constant and systematic, unfair trial, incommunicado detention, summary execution and involuntary disappearance (generally no information is forthcoming from the authorities).

13. Similarly, more than 50 peaceful demonstrations calling for Tibetan independence, led mostly by monks and nuns, were staged, particularly in Central Tibet, in the past two years. The biggest of these demonstrations occurred on 24 May 1993, a day after a high-level European Community delegation ended their visit to Tibet. Latest reports from Lhasa stated that at least 22 Tibetan nuns were detained after staging various demonstrations in the city between 9 and 14 December 1993.

14. IFHR believes that the trend of massive and systematic human rights violations in Tibet has reached such a degree that measures ha[illegible] to be taken by the international community. Therefore, the IFHR urges the Commission on Human Rights to designate a Special Rapporteur to monitor the situation under point 12.

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COMMISSION ON HUMAN RIGHTS
Fiftieth session
Item 10 of the provisional agenda

QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT

Written statement submitted by the International Federation of Human Rights, a non-governmental organization in consultative status (category II)

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[4 February 1994]

STATE OF EXCEPTION, DETENTION AND DISAPPEARANCES IN SYRIA

1. The International Federation of Human Rights (IFHR) and its Syrian affiliate, the Organization of Committees for the Defence of Democratic Freedoms and Human Rights in Syria (the CDFs) wish once again to draw your attention to the fact that mid-February, as the Commission on Human Rights holds its fiftieth session, will mark the twenty-fifth anniversary of the arrest of Mr. Ahmad Swaidani and the twenty-fourth year of detention of 11 other political prisoners (see annex III), all of whom are currently detained without trial under the state of emergency that has been continuously in force for the last 31 years.

2. Since the forty-ninth session of the Commission, held in February and March 1993, some 30 prisoners have been released, 6 of whom had been listed as detainees for more than 22 years. We welcome their release, but we regret to inform the Commission that, for the first time since 1990, the number of persons arrested exceeds the number freed: in the meantime, 45 political detainees have joined the list of 5,100 political prisoners and prisoners of opinion or conscience languishing in Syrian prisons.

3. Despite demands from the international community, 15 CDF activists remain in prison, 10 of them having been convicted, at the end of a grossly unfair trial by a court of special jurisdiction, merely for exercising their fundamental right to defend human rights. The other five are currently standing trial before the same court (see annex I). They continue to be accused of terrorism by the Syrian authorities (see, for example, the statement by the Syrian delegation at the forty-ninth session of the Commission on Human Rights), although it is now internationally acknowledged and accepted that they never advocated or used violence. We wish to draw attention to the fact that the state of health of the lawyer Aktham Nouaisseh, the CDF spokesman detained at Sednaza prison since 18 December 1991, has seriously deteriorated in recent months.

4. The IFHR and the CDFs once again draw attention to the fact that since August 1971 the Syrian Government has systematically accused prisoners of opinion of terrorism without ever bringing the relevant charges in an ordinary court, while the State Security Court has had no grounds for its existence since 1973, the date of the ratification of the Constitution by Syria's highest executive and legislative bodies. In this regard, it will be noted with satisfaction that on 12 June 1993 Judge Mulla Nasrat Haidar, President of the Supreme Constitutional Court of Syria, stated that "military laws that are not aimed at sparing the country from a real and serious danger are null and void".

5. As regards prison conditions, the IFHR and the CDFs are in possession of information attesting to practices which are absolutely incompatible with the Standard Minimum Rules for the Treatment of Prisoners, and which have resulted in the death under torture of Mr. Rizq Qutaifan and the death in deplorable conditions of Mr. Salah Jadid after 23 years of detention without trial. The IFHR and the CDFs are extremely concerned at the state of health of the persons named in annex II.

6. Our organizations are concerned at the resumption of arbitrary arrests of women, following the spate of releases at the end of November 1991 in which 71 women prisoners were freed. At least seven women - Rosette Issa, Khadirja Dib, Fadwa Mahmud, Dhuha Ashour, Assibah Abdelrahman, Assia Mahmoud and Tamara Ma'rouf - were arrested in 1993.

7. The IFHR and the CDFs are concerned at the unfair trials taking place before the State Security Court, involving more than 500 prisoners of opinion. Communists, Baathists, Nasserists, Kurdish nationalists and human rights activists are collectively standing trial before this court, which passed its first sentences in June 1993 (see the statement by the IFHR in the Sub-Commission on Prevention of Discrimination and Protection of Minorities at

its forty-sixth session (E/CN.4/Sub.2/NGO/11)). Following international protests, the court has passed no further sentences since that time; however, it has yet to discontinue proceedings against the other prisoners.

8. With the aid of the IFHR, the CDFs are studying the cases of 3,000 persons who have disappeared, and are calling for fuller information regarding the 400 cases in which there are still grounds for hope - more than several dozen of which have already been taken up by a number of non-governmental organizations and brought to the attention of the Working Group on Enforced or Involuntary Disappearances. In particular, we call on the Syrian Government to provide immediate clarification of the fate of Wafa Obedat, Shazkha Abd al-Jundi, Hassan al-Hafez, Rashwan al-Zoussifi and Moustapha Abou Kouss.

9. The IFHR and the CDFs call on the Commission to support this demand, as well as the immediate and unconditional freeing of about 5,000 prisoners of opinion recorded by the organizations, the abolition of the special courts and implementation of the guarantees of the right to a fair trial. They also renew their call for an end to the practice of torture and for the punishment of those who engage in torture.

Annex I

CDF activists sentenced by a court of special jurisdiction on 17 March 1992 to 5 to 10 years' imprisonment with hard labour and deprivation of civil rights

Aktham Nouaisseh (9 years)

Afif Mizer (9 years)

Muhamad Ali Habib (9 years)

Nizar Nazouf (10 years)

Bassam al-Shazkh (5 years)

Thabet Murad (5 years)

Jadi' Nawfal (5 years)

Ya'qub Musa (5 years)

Hassan Ali (5 years)

Hussam Salama (5 years)

Annex II

Application of the Standard Minimum Rules for the Treatment of Prisoners: some critical cases

Adnan al-Qadi

Riad al-Turk

Moustaffa Khalifa

Abbas Abbas

Khaled Nasser

Misham Zouqi

Mahmud Fazzadh

Muhammed Id Ashshawi

Issu Muhammad

Nabil Fawwaz

Nizar Mradni

Ghassan Kassis

Ahmad Hassan Mansour

Annex III

Persons detained without trial for at least 22 years (1) or who had served their full sentence by 1985 (2)

Ahmad Swaidani (1969) (1)

Mustapha Fallah (1970) (2)

Khalil Brazez (1970) (2)

Mahmud Fazzadh (1970) (2)

Jalal al-din Mirhij (1970) (2)

Hadirha Murad (1970) (1)

Muhammed Id Ashshawi (1970) (1)

Fawiz Rida (1970) (1)

Abdel Hamid Muqdad (1970) (1)

Dhafi Jouma'ni (1970)

Mustafa Rustum (1970) (1)

Adel Naissa (1972) (1)

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COMMISSION ON HUMAN RIGHTS
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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES, INCLUDING:

(b) STUDY OF SITUATIONS WHICH APPEAR TO REVEAL A CONSISTENT PATTERN OF GROSS VIOLATIONS OF HUMAN RIGHTS AS PROVIDED FOR IN COMMISSION RESOLUTION 8 (XXIII) AND ECONOMIC AND SOCIAL COUNCIL RESOLUTIONS 1235 (XLII) AND 1503 (XLVIII): REPORT OF THE WORKING GROUP ON SITUATIONS ESTABLISHED BY ECONOMIC AND SOCIAL COUNCIL RESOLUTION 1990/41 OF 25 MAY 1990

Written statement submitted by the Inter-Parliamentary Union, a non-governmental organization in consultative status (category I)

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

1. The Inter-Parliamentary Union, 1/ deeply concerned by the situation in the former Yugoslavia, has taken a stand on this problem on two different occasions. Two resolutions were adopted, at the 89th and 90th Inter-Parliamentary Conferences.

1/ As of January 1994, 125 national Parliaments are represented in the Inter-Parliamentary Union as members. IPU also has three international parliamentary assemblies as associate members: Andean Parliament, Latin American Parliament, Parliamentary Assembly of the Council of Europe.

2. In the first, the Union expresses its view as regards the protection of minorities and the prevention of further loss of life in order that peaceful coexistence and respect for human rights can be restored in the former Yugoslavia.

3. The second resolution concerns the case of external displacement as a consequence of the conflict in Bosnia and Herzegovina and urges Governments to adopt measures to encourage the acceptance and repatriation of such persons. The members of the Commission on Human Rights will find below for their information the text of these resolutions.

THE NEED FOR URGENT ACTION IN THE FORMER YUGOSLAVIA, PARTICULARLY AS REGARDS THE PROTECTION OF MINORITIES AND THE PREVENTION OF FURTHER LOSS OF LIFE IN ORDER THAT PEACEFUL COEXISTENCE AND RESPECT FOR HUMAN RIGHTS CAN BE RESTORED FOR ALL PEOPLES

Resolution adopted without a vote 2/ by the 89th Inter-Parliamentary Conference (New Delhi, 17 April 1993)

The 89th Inter-Parliamentary Conference,

Deploring the conflict in the former Yugoslavia, especially in Bosnia and Herzegovina, and condemning the atrocities against minorities, women and children,

Strongly condemning the practice of "ethnic cleansing" and most particularly the use of systematic rape of women and girls as a weapon of war, and declaring that such violations of human rights are most heinous war crimes and must be considered crimes against humanity,

Recalling the resolution adopted by the 88th Inter-Parliamentary Conference (Stockholm, September 1992) concerning the situation in Bosnia and Herzegovina,

Expressing deep concern that, despite all the relevant resolutions adopted by the United Nations Security Council, there has been a continuing escalation of violence, aggression and occupation of territories, causing millions of displaced persons and refugees, particularly in Bosnia and Herzegovina,

Emphasizing that the international community should seek a solution which does not reward aggression,

1. Supports current international sanctions imposed on the Federal Republic of Yugoslavia (Serbia and Montenegro) and designed to end the fighting and place pressure upon those responsible for the conflict to reach an immediate settlement, and calls on the international community to take further measures to stop the aggression;

2/ The delegation of Yugoslavia expressed its opposition to this resolution on account of the content of operative paragraph 1.

2. Emphasizes the need for more effective implementation of the United Nations total arms embargo on all sides in order to ensure its equal impact on all parties as a means to end the continuing aggression;

3. Endorses the decision taken by the United Nations Security Council in its resolution 808 (1993) to establish an international tribunal for the prosecution of persons responsible for violations of international humanitarian law committed in the territory of the former Yugoslavia, especially in Bosnia and Herzegovina;

4. Reasserts the right of all communities to live in peace and security within their internationally recognized borders;

5. Expresses appreciation to all those undertaking peace-keeping and humanitarian aid action, especially under the auspices of the United Nations;

6. Recognizes the right of self-defence of United Nations peace-keeping troops, and calls on all parties to ensure their safety so that they can discharge their duties effectively in the field of humanitarian aid and peace-keeping;

7. Demands that humanitarian aid efforts be unimpeded by all parties to the conflict;

8. Strongly condemns all violations of humanitarian law and fundamental human rights in the former Yugoslavia, especially in Bosnia and Herzegovina, as well as the practice of "ethnic cleansing", and calls on those responsible to cease such violations immediately and ensure full respect for humanitarian law as well as the human rights and fundamental freedoms of all persons, regardless of their race, sex, language or religion;

9. Firmly condemns all forced demographic changes in the occupied territories of the former Yugoslavia, especially in Bosnia and Herzegovina;

10. Calls on countries to help refugees fleeing from the conflict;

11. Urges the creation of the necessary conditions for the safe repatriation of all displaced civilians and refugees to their homes as soon as possible;

12. Categorically condemns the systematic rape of women and girls in the former Yugoslavia, especially in Bosnia and Herzegovina, and urges the belligerent parties immediately to cease violence against women and girls;

13. Declares that systematic rape of women and girls in armed conflicts is a war crime and must be designated as a crime against humanity under international law;

14. Calls for the appointment of a special woman rapporteur, at the United Nations Commission on Human Rights, for human rights violations committed against women, and suggests the establishment, within the framework of the United Nations, of a relief fund for the victims of systematic rape;

15. Calls on all parties to respect international humanitarian law and to release immediately all persons arrested arbitrarily or detained;

16. Supports the efforts of those pursuing effective peace plans and bringing the warring parties together in an attempt to achieve a peaceful resolution, and welcomes international efforts to end the conflict in order to prevent it from spreading;

17. Demands that the Bosnian-Serb side sign without further delay the Vance-Owen peace plan as the other parties to the conflict in Bosnia and Herzegovina have already done;

18. Asks the Inter-Parliamentary Council to consider sending a special IPU mission to the former Yugoslavia, in accordance with article 1, 2 (b) of the Statutes, to hold consultations with regard to human rights and to support efforts for peace in the region;

19. Suggests that, following the settlement of the conflict, the Inter-Parliamentary Council also considers sending a mission to observe the return of refugees and displaced persons to their homes;

20. Urges national parliaments and Governments to take all necessary measures to protect human rights, implement humanitarian law, promote peace and achieve a lasting solution to the underlying causes of conflict in the former Yugoslavia.

EXTERNAL DISPLACEMENT AS A CONSEQUENCE OF THE CONFLICT IN BOSNIA AND HERZEGOVINA AND OTHER WARS AND CIVIL WARS

Resolution adopted without a vote 3/ by the 90th Inter-Parliamentary Conference (Canberra, 18 September 1993)

The 90th Inter-Parliamentary Conference,

Gravely concerned that armed conflict in Bosnia and Herzegovina and other wars and civil wars are causing disaster for a huge number of people and that the victims are mostly civilians, particularly women, children and the elderly who are forced to flee their homes for safety, and further concerned by massive human rights violations, particularly the ongoing practices of expulsion and displacement in the war zones of Bosnia and Herzegovina and other areas of conflict,

Bearing in mind that external displacement as a consequence of wars and civil wars causes serious political, economic and social instability in neighbouring regions also,

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3/ The delegation of Viet Nam expressed reservations about operative paragraph 5, and the delegation of Yugoslavia about operative paragraph 4 (a).

Emphasizing the fact that various international legal instruments qualify displacement, expulsion and deportation of populations as crimes against humanity or war crimes,

Recalling the resolutions adopted by the 89th Inter-Parliamentary Conference on transparency in arms transfer and on the former Yugoslavia,

Aware that minorities or other groups differing from the majority population in terms of their ethnic, religious or cultural backgrounds are often among the first victims of displacement,

1. Urges Governments and the world community to take forceful and decisive steps towards achieving peace in areas of conflict, war and civil war;

2. Severely condemns the odious practice known as "ethnic cleansing" in war-torn Bosnia and Herzegovina;

3. Expresses its abhorrence of the continued brutalization of the civilian population - often on ethnic grounds - in these areas and other areas of conflict where systematic terrorizing of civilians regularly precedes their eviction from their ancestral homes;

4. Calls on Governments and the United Nations, as appropriate, to develop political and legal safeguards against further deportation and displacement inter alia through:

(a) Speedy implementation of United Nations Security Council resolutions establishing an international tribunal of criminal justice for prosecuting persons responsible for serious violations of international humanitarian law in the former Yugoslavia, and the implementation of the tribunal's decisions in fulfilment of States' obligations as Members of the United Nations;

(b) Unequivocal support for the mandate of the International Law Commission (ILC) to draw up a statute for an international criminal court and for the relevant articles of the Draft Code of Crimes against the Peace and Security of Mankind prepared by the ILC;

(c) Elaboration of a convention against expulsion and displacement of populations complementary to the 1948 United Nations Convention on the Prevention and Punishment of the Crime of Genocide, effectively banning such displacements and making them punishable under international law;

5. Supports the recommendation of the United Nations World Conference on Human Rights (Vienna, June 1993) to the United Nations General Assembly to begin, as a matter of priority, consideration of the question of the establishment of a High Commissioner for Human Rights;

6. Appeals to all States which have not yet done so to ratify all relevant conventions and protocols relating to the expulsion and displacement of populations caused by wars and civil wars, in particular the relevant Geneva Conventions of 1949, their Additional Protocols of 1977 and the Convention against Genocide;

7. Urges Governments to support and fully cooperate with the United Nations High Commissioner for Refugees (UNHCR) in order to effectively improve the treatment of the victims of conflicts, wars and civil wars;

8. Calls on all parliaments to urge their respective Governments to continue to facilitate the work of the International Committee of the Red Cross (ICRC) and to allow that body to fulfil its humanitarian mission;

9. Urges the Governments of the countries of origin of refugees and other displaced persons to adopt effective economic, political and social measures to encourage the repatriation of such persons, and appeals to the international community to help and promote the execution of such measures with due regard for the UNHCR principles covering such activities;

10. Appeals to all Governments to grant refuge to the victims of expulsion and displacement, exert all possible efforts to make their repatriation feasible by applying United Nations resolutions concerning this problem in the different conflicts throughout the world, and assist the United Nations and other bodies in providing them with dignified living conditions.

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THE RIGHT OF PEOPLES TO SELF-DETERMINATION AND ITS APPLICATION TO PEOPLES UNDER COLONIAL OR ALIEN DOMINATION OR FOREIGN OCCUPATION

Written statement submitted by Human Rights Advocates, a non-governmental organization in consultative status (category II)

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

The Right to Self-Determination

1. The final report of the Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities on "Possible ways and means of facilitating the peaceful and constructive solution of problems involving minorities" (E/CN.4/Sub.2/1993/34 and Add.1-4, hereinafter referred to as "SC Report 1993/34") contains an extensive discussion and a restrictive interpretation of the right to self-determination not supported by the Charter of the United Nations.

Self-determination and territorial integrity in the Charter

2. A review of distinctions made in the Charter of the United Nations between its purposes and principles may be helpful. Article 1 of the Charter lists the purposes of the United Nations, including, inter alia, the promotion of friendly relations among nations based on equal rights and self-determination of peoples - "all peoples" as further elaborated by common article 1.1 of the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights. The purposes listed in article 1 of the Charter are to be pursued according to certain principles including members refraining from the use of force threatening the territorial integrity of other members. The Charter does not

use the word "people" selectively to include or exclude certain peoples, or certain continents, or certain historical circumstances, or before or after certain dates. The Charter also clearly states that Member States are to refrain from threatening the territorial integrity of another Member State.

3. The Charter does not condition the exercise of people's right to self-determination by an absolute respect for the territorial integrity of Member States. In addition, by enumerating the right to self-determination among the purposes of the United Nations and the respect for the territorial integrity of States among the principles upon which those rights are to be pursued, the Charter may be giving precedence to the right to self-determination over the respect for territorial integrity. At most, a balancing requirement between the right to self-determination and the territorial integrity of States may be implied from the language of the Charter. Nowhere does the Charter imply or suggest that the right to self-determination may be denied where the territorial integrity of a State is threatened. Yet States attempt to restrict the right to self-determination by defining the term "people" as restrictively as their own State interests would require, regardless of the Charter. Similarly, SC Report 1993/34 restricts the right to self-determination in a manner not supported by the Charter.

Misplaced emphasis on territorial integrity

4. SC Report 1993/34 (para. 59) restricts the search for a just world order within the confines of "the territorial integrity of sovereign States while promoting the right to self-determination of the peoples of non-self-governing and occupied territories".

5. The restrictive discussion of the right to self-determination and the emphasis on maintaining the territorial integrity of inherited States is more explicit in a progress report by the same Special Rapporteur (E/CN.4/Sub.2/1992/37 and Add.1 and 2, hereinafter referred to as "SC Report 1992/37)". While accepting the fact that some aspects of the right to self-determination are non-controversial, such as in cases of colonial domination, SC Report 1992/37 arbitrarily limits even this non-controversial aspect to territories beyond Europe (para. 161) and territories subjected to alien domination after the Charter of the United Nations was adopted in 1945 (para. 162). We are told that, before 1945, many of the States which exist currently were formed through conquest and military occupation, therefore to change those borders will play havoc with world order, and that in many of those countries people have learned to live together (para. 163). Not a convincing argument if one considers current developments in the territories of the former USSR where peoples may "have learned to live together" only under the threat of force and repression.

The case of federations formed through the "voluntary accession of republics"

6. SC Report 1992/37 (para. 164) places another unjustified restriction on the right to self-determination by limiting it to federations which were formed through the "voluntary accession of republics" and whose constitution guarantees the right to secession, of which "the most prominent examples are the Soviet Union and the Yugoslav federation". To consider the Soviet Union a

"voluntary accession" of republics is simply ignoring the history of Russian colonialism and subsequent Bolshevik military conquest in Europe, Asia, and the Trans-Caucasus.

The requirement of democratic Government

7. SC Report 1992/37 (para. 165) suggests that, beyond the limited circumstances cited above, the unilateral right to self-determination is extremely doubtful and overridden by the right to territorial integrity so long as the State conducts itself according to principles of equal right and self-determination of peoples and is possessed of a government representing the whole of its citizens. The underlined section restates the 1970 General Assembly Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations resolution 2625 (XXV).

8. Yet SC Report 1993/34 (para. 84) also restricts the interpretation of resolution 2625 (XXV) by stating that representatives of minority groups concerned must "prove, beyond reasonable doubt, that there is no prospect within the foreseeable future that the Government will become representative of the whole people, [to] be entitled to demand and to receive support for a quest for independence. If it can be shown that the majority is pursuing a policy of genocide against the group, this must be seen as very strong support for the claim of independence". In the same paragraph, it is admitted that "[u]nfortunately, when violence has reached such levels, there is at present no machinery at the international level to which the aggrieved party can turn for an impartial finding".

9. Since the Charter was adopted, aggrieved minority groups have presented to United Nations forums credible claims evidencing a threat to their existence and identity, including claims of impending or actual genocide. Yet, the international community was unable or unwilling to stop the atrocities, including genocide, massacres, deportations and massive violations of human rights and fundamental freedoms. Another problem in SC Report 1993/34 is the requirement to prove such violations "beyond any reasonable doubt", an extremely high standard for proof which will be impossible to meet unless genocide is already in progress, in which case it would be already too late for the international community to do anything to remedy the situation and safeguard the existence and identity of a threatened group. In other words, if a Government denies the charges brought forward by a minority group, "reasonable doubt" will be established. Given the long delays in international forums (not to speak of political considerations) and the standard of proof required, aggrieved groups are left with no alternative but to resort to self-help and self-defence, a prescription for a vicious cycle of violence and human rights abuses.

"Minority" v. "people"

10. SC Report 1993/34 (para. 75) recognizes that there is "considerable controversy" as to who constitutes a "people". However, the report continues, "the World Conference on Human Rights contributed a partial clarification of this issue" by limiting the right to self-determination to "peoples under

colonial or other forms of alien domination or foreign occupation". At best, it would be premature to announce that the Vienna Declaration even partially clarified disputes over legal principles.

11. Indeed, the terms "minority" and "people" have been difficult to define legally, as experienced by the Sub-Commission, and are subject to deliberate confusion and abuse by States attempting to restrict the rights of minority groups within their territory. The predicament of a definition is recognized in para. 3 of SC Report 1992/37 in which it is stated, "the line between 'minority' and 'people' has become increasingly blurred and has to be addressed". The difficulty arises from the dichotomy created in international law between the two terms when the consequences of categorizing a group under either term may merge into the same result. The consequence of classifying a group as a minority may range from granting the group members minimal equal rights - the free exercise of religious rights, use of language, etc., to the granting of more affirmative group rights such as various degrees of cultural, administrative and territorial autonomy, as well as the right to self-determination if the dominant Government is not representative of all groups in the territory. The consequence of classifying a group as a people may also range from the various forms of cultural, administrative and territorial autonomy, to a maximum right to self-determination, including secession, border changes, and independence.

12. The dichotomy between the terms "minority" and "people" maintained in international law no longer serves a useful function. On the contrary, it serves only to suppress the legitimate grievances of groups and to deny the right to self-determination to minority groups or peoples, thus encouraging conflict and abuses of human rights.

13. The international community should do away with the dichotomy and start to address minority/peoples problems in terms of the end result, that is minority groups within States are entitled to a spectrum of rights ranging from minimal equal rights, to the right to speak their own language or exercise their own religion, to the more affirmative right to education in their own language, to various forms and degrees of autonomy, and finally, when all else fails, to full self-determination. International law will not be contradicted if the minimal "minority rights" and maximal "peoples rights" are considered as the two poles of a spectrum of rights.